

# DEPARTMENT of the INTERIOR

news release

FISH AND WILDLIFE SERVICE

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## PRECEDENT SETTING HUNTING COURT CASE DECIDED

A precedent setting decision on waterfowl hunting was handed down on October 21 when Judge John Lewis Smith of the U.S. District Court for the District of Columbia denied a preliminary injunction that would have stopped the hunting of certain waterfowl across the Nation.

The injunction was sought by seven animal protectionist groups to stop the hunting of the greater snow goose, Atlantic brant, merganser, and goldeneye duck. The groups charged that the Interior Department did not comply with its responsibilities under two Federal laws, and that it violated migratory bird treaties with Great Britain and Japan.

The decision reaffirms and supports the manner in which the U.S. Fish and Wildlife Service sets the annual waterfowl hunting regulations. The court found that the Service satisfied the public participation requirements of the Administrative Procedures Act during this rulemaking process. The process was changed last year so that the public could have greater opportunity to participate.

The groups also had claimed that the Service did not adequately fulfill its responsibilities under the National Environmental Policy Act. They claimed separate environmental impact statements on the resumption of hunting for the snow goose and the Atlantic brant should have been prepared. They contended that since the snow goose had not been hunted since 1931 and the Atlantic brant since 1972, the Act required issuance of impact statements for the hunting of each bird species prior to the rulemaking process.

(over)

The court found, however, that the impact statement issued by the Service in June on the issuance of annual regulations permitting the sport hunting of migratory birds plus environmental assessments that were prepared on the proposed seasons on the two species were sufficient to satisfy the requirements of the Act. It is one of the first cases ever to approve an environmental impact statement prepared on an entire program.

The decision also represents the first time that a court has interpreted the Service's responsibility under the 1972 Migratory Bird Treaty Act with Japan. The court rejected the groups' rigid approach to interpretation of the treaty which would have required the Service to establish absolute population figures for each species before setting waterfowl hunting regulations. It found that an absolute population figure for each species is not required under the treaty and that the Service's complex data gathering process to determine the appropriate limits and conditions of migratory bird hunting is adequate.

Further, the court affirmed for the first time the Service's 57-year-old interpretation of the 3-1/2 month season-length provision of the Migratory Bird Treaty with Great Britain. The groups had interpreted it to mean that all hunting across the country should occur within the same 107-day season. The court supported the Service's long-standing system of "staggered" hunting seasons with each species of migratory waterfowl hunted in any one State or management unit for up to 107 days per year. Since all species do not migrate simultaneously and are not present, for example, in a southern State at the same time as in a northern State, establishing hunting seasons for migratory birds requires a flexible approach. Therefore, the hunting season for a particular species nationwide need not occur within any given period of 107 days.

The groups that brought the suit are the Fund for Animals, Defenders of Wildlife, Friends of the Earth, Wildlife Preserves, Inc., the Humane Society of the United States, DEER, Inc., and Animal Protection Institute of America. Their request for a temporary restraining order had been considered earlier by the court and denied on October 1.

Defendants were the Secretary of the Interior, the Director and the Regional Director of the U.S. Fish and Wildlife Service (Federal defendants), and seven intervenors--the States of Louisiana, South Dakota, Virginia, and Washington, the International Association of Game, Fish and Conservation Commissioners, the National Society for Conservation and Animal Protection, and the National Rifle Association. In addition, two States, Minnesota and New Jersey, filed amicus curiae briefs by leave of the court.